

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No. _____
Purchased _____

-----X
KIMMARLEY BINDA, which the police misspelled,
KIMARLEY VIENDA,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY
DETECTIVE EDWIN ALVARADO OF NARCBX,
SHIELD #4015, TAX REG. #946739, NYPD UCO,
SHIELD #0309 UNDER DOCKET #2014BX045388
N/H/A JOHN/JANE DOE I, OTHER NYPD
OFFICERS WHOSE NAMES ARE NOT KNOWN AT
THIS TIME INVOLVED IN SAID ARREST N/H/A
JOHN/JANE DOE II-V,

Defendants.

-----X

VERIFIED COMPLAINT

RECEIVED
AUG 26 PM 3:10
COUNTY CLERK
COUNTY

KIMMARLEY BINDA, which the police misspelled, KIMARLEY VIENDA by his
attorneys, JOHN R. DEPAOLA & ASSOCIATES PLLC, respectfully alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times mentioned, Plaintiff KIMMARLEY BINDA, which the police misspelled, KIMARLEY VIENDA was a resident of Bronx County, City and State of New York.
2. At all times mentioned, Defendant CITY OF NEW YORK, was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.
3. On or about the 12th day of March, 2015 and within ninety (90) days after some of the claims herein arose, the Plaintiff served a Notice of Claim in writing sworn to on their behalf upon the Defendant CITY OF NEW YORK,

by delivering a copy thereof in duplicate to the officer designated to receive such process personally, which Notice of Claim advised the Defendant CITY OF NEW YORK, of the nature, place, time and manner in which the claim arose, the items of damage and injuries sustained so far as was then determinable.

4. At least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety (90) days after the happening of the event upon which the claims are based.
5. The Plaintiff has complied with the request of the municipal Defendant's for an oral examination pursuant to Section 50-H of the General Municipal Law and/or the Public Authorities Law and/or no such request was made within the applicable period.
6. Upon information and belief, at all times mentioned, Defendants **NEW YORK CITY DETECTIVE EDWIN ALVARADO OF NARCBBX, SHIELD #4015, TAX REG. #946739, NYPD UCO, SHIELD #0309 UNDER DOCKET #2014BX045388 N/H/A JOHN/JANE DOE I, OTHER NYPD OFFICERS WHOSE NAMES ARE NOT KNOWN AT THIS TIME INVOLVED IN SAID ARREST N/H/A JOHN/JANE DOE II-V**, were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, **THE CITY OF NEW YORK**.

7. On or about August 22, 2014, at approximately 2:00 P.M. in the vicinity of 183rd Street and Jerome Avenue, which the police stated was at approximately 4:28 P.M. at the corner of 182nd Street and Walton Avenue, County of Bronx, State of New York the Defendants jointly and severally in their capacity as police officers, wrongfully touched, grabbed, handcuffed and seized the Plaintiff **KIMMARLEY BINDA, which the police misspelled, KIMARLEY VIENDA**, in an excessive manner about his person, causing him physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A SECOND CAUSE OF ACTION

8. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "7" with full force and effect as though set forth at length herein.
9. On or about August 22, 2014, at approximately 2:00 P.M. in the vicinity of 183rd Street and Jerome Avenue, which the police stated was at approximately 4:28 P.M. at the corner of 182nd Street and Walton Avenue, County of Bronx, State of New York the Defendants, jointly and severally did place Plaintiff **KIMMARLEY BINDA, which the police misspelled, KIMARLEY VIENDA**, in imminent fear of physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact.

At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A THIRD CAUSE OF ACTION

10. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "9" with full force and effect as though set forth at length herein.
11. On or about August 22, 2014, at approximately 2:00 P.M. in the vicinity of 183rd Street and Jerome Avenue, which the police stated was at approximately 4:28 P.M. at the corner of 182nd Street and Walton Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and unlawfully arrested the Plaintiff, restrained him and his liberty and then took him into custody to a police station in the County of Bronx and there charged him with the crimes on Docket No. 2014BX045388. The Plaintiff was thereafter held in custody over the course of three (3) days or approximately forty-eight (48) hours until he was released on his own recognizance. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FOURTH CAUSE OF ACTION

12. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "11" with full force and effect as though set forth at length herein.

13. On or about August 22, 2014, at approximately 2:00 P.M. in the vicinity of 183rd Street and Jerome Avenue, which the police stated was at approximately 4:28 P.M. at the corner of 182nd Street and Walton Avenue, County of Bronx, State of New York the Defendants, jointly and severally without any valid warrant, order or other legal process and without any legal right, wrongfully and unlawfully imprisoned the Plaintiff, restrained him and his liberty and then took him into custody and causing him to be incarcerated as a detainee in the City of New York's Correctional Facility. The Plaintiff was thereafter held in custody over the course of approximately three (3) days or approximately forty-eight (48) hours before he was released. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FIFTH CAUSE OF ACTION

14. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "13" with full force and effect as though set forth at length herein.
15. Upon information and belief, on or about August 22, 2014 and from that time until the dismissal of charges on or about December 18, 2014 which was a favorable termination for the accused by the Honorable Judge presiding at, Bronx County Criminal Court, Defendants **THE CITY OF NEW YORK, NEW YORK CITY DETECTIVE EDWIN ALVARADO OF NARCB BX, SHIELD #4015, TAX REG. #946739, NYPD UCO, SHIELD #0309 UNDER DOCKET #2014BX045388 N/H/A JOHN/JANE DOE I, OTHER NYPD**

OFFICERS WHOSE NAMES ARE NOT KNOWN AT THIS TIME

INVOLVED IN SAID ARREST N/H/A JOHN/JANE DOE II-V, an innocent man without any probable cause whatsoever, by filing or causing a criminal court complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of falsely accusing the plaintiff of violations of the criminal laws of the State of New York.

16. The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiff and due to the absence of probable cause malice can be inferred.
17. The commencement of these criminal proceedings under Docket No. 2014BX045388 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.
18. As a result of the malicious prosecution, Plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearances to defend his liberty against these unjust charges.

AS AND FOR A SIXTH CAUSE OF ACTION

(This Cause of action only applies against the Individually named Police Officers not the City of New York or officers sued in their official capacity)

19. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "18" with full force and effect as though set forth at length herein.
20. Defendants **NEW YORK CITY DETECTIVE EDWIN ALVARADO OF NARCBX, SHIELD #4015, TAX REG. #946739, NYPD UCO, SHIELD #0309 UNDER DOCKET #2014BX045388 N/H/A JOHN/JANE DOE I, OTHER NYPD OFFICERS WHOSE NAMES ARE NOT KNOWN AT THIS TIME INVOLVED IN SAID ARREST N/H/A JOHN/JANE DOE II-V**, were at all times relevant, duly appointed and acting officers of the City of New York Police Department.
21. At all times mentioned herein, said police officers were acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.
22. Plaintiff **KIMMARLEY BINDA**, which the police misspelled, **KIMARLEY VIENDA** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.
23. The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.
24. On or about August 22, 2014, the Defendants, armed police, while effectuating the seizure of the Plaintiff **KIMMARLEY BINDA**, which the police misspelled, **KIMARLEY VIENDA**, did search, seize, assault and commit a battery and grab the person of the Plaintiff without a court

authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested, unlawfully imprisoned and maliciously prosecuted without the Defendants possessing probable cause to do so.

25. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights protected under the United States Constitution:
 - a. Freedom from assault to his person;
 - b. Freedom from battery to his person;
 - c. Freedom from illegal search and seizure;
 - d. Freedom from false arrest;
 - e. Freedom from malicious prosecution;
 - f. Freedom from the use of excessive force during the arrest process;
 - g. Freedom from unlawful imprisonment;
 - h. Freedom from loss of his liberty.
 - i. Freedom from being illegally strip searched with a cavity inspection.
26. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights protected under the Fourth and Fourteenth Amendments of the United States Constitution.
27. The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A SEVENTH CAUSE OF ACTION

28. Plaintiff incorporates, repeats and re-alleges all of the allegations contained in Paragraphs "1" through "27" with full force and effect as though set forth at length herein.
29. Defendant **CITY OF NEW YORK** has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.
30. **THE CITY OF NEW YORK** was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest a search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should not be used where a criminal defendant is not resisting arrest.
31. **THE CITY OF NEW YORK** is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:
 1. Probable cause must be present before an individual such as the Plaintiff herein can be arrested.

2. Excessive force cannot be used against an individual who does not physically resist arrest.
3. An individual who sustains physical injury at the hands of the police during the arrest process should receive prompt medical attention.
31. The foregoing acts, omissions and systemic failures are customs and policies of the **CITY OF NEW YORK** which caused the police officers to falsely arrest, maliciously prosecute, seize illegally and search the Plaintiff commit an assault/battery to his person and denied him prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

AS AND FOR AN EIGHTH CAUSE OF ACTION

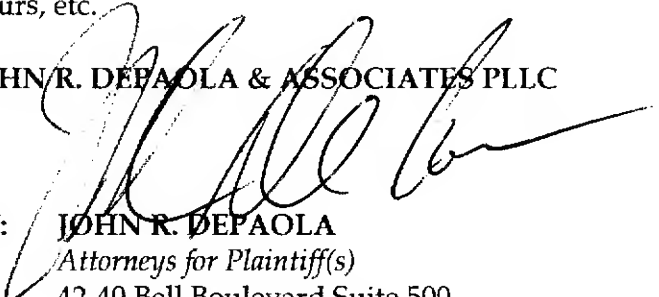
32. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "31" as it set forth at length herein.
33. Defendant **CITY OF NEW YORK** was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police Officer Defendants, knew or should have known of the bad disposition of said Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact that these officers were not suitable to be hired and employed by the **CITY OF NEW YORK** and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

WHEREFORE, Plaintiff demands judgment against the Defendants, together with the costs and disbursements of this action in the amount of damages greater than the jurisdictional limit of any lower court where otherwise have jurisdiction, together with attorneys' fees and costs for bringing this case and punitive damages.

Dated: Bayside, New York
August 25, 2015

Yours, etc.

JOHN R. DEPAOLA & ASSOCIATES PLLC

BY:  JOHN R. DEPAOLA
Attorneys for Plaintiff(s)
42-40 Bell Boulevard Suite 500
Bayside, New York 11361
(718) 281-4000

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KIMMARLEY BINDA, which the police misspelled,
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-against-

VERIFICATION

THE CITY OF NEW YORK, NEW YORK CITY
DETECTIVE EDWIN ALVARADO OF NARCB BX,
SHIELD #4015, TAX REG. #946739, NYPD UCO,
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JOHN/JANE DOE II-V,

Defendants.

-----X

I, JOHN R. DEPAOLA, an attorney admitted to practice in the courts of New York State, state that I am a member of the firm of JOHN R. DEPAOLA & ASSOCIATES PLLC, the attorneys of record for Plaintiffs in the within action; I have read the foregoing and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by Plaintiff is because Plaintiff resides outside the county where deponent maintains his office.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: Bayside, New York
August 25, 2015



JOHN R. DEPAOLA

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COUNTY OF BRONX

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NOT KNOWN AT THIS TIME INVOLVED IN SAID ARREST N/H/A JOHN/JANE DOE II-V,

Defendants.

SUMMONS AND VERIFIED COMPLAINT

JOHN R. DEPAOLA & ASSOCIATES PLLC
BY: JOHN R. DEPAOLA
Attorney for Plaintiff(s)
42-40 Bell Boulevard
Bayside, NY 11361
Tel. (718) 281-4000

To: CORPORATION COUNSEL OF NEW YORK CITY

Attorney(s) for Defendants

Service of a copy of the within is hereby admitted.

Dated

Attorney(s) for